In the High Court for the States of Punjab and Haryana, at Chandigarh.

R.S.A. No. 1133 of 1985
Decided on Oct 17,2007.

Nachhattar Singh -- Appellant

vs.

The Municipal Committee Rupnagar and another -- Respondents.

Present: Mr.Madhu Dayal,Advocate,for the appellant

Mr.D.B.Singh,Advocate,for the respondents.

Permod Kohli, J:(Oral)

This is plaintiff's second appeal against the judgment and decree dated February 15,1985, passed by learned District Judge, Ropar, whereby the judgment and decree dated October 29,1983,passed by Senior Subordinate Judge, Rupnagar, has been affirmed and the suit of the plaintiff/appellant dismissed.

Briefly stated the facts as emerge from the record are that the plaintiffs filed a suit for permanent prohibitory injunction against the respondent-Municipal Committee, seeking an injunction not to interfere or dismantle the main gate of their plots opening in the gali adjoining their

plots situated at village Haveli kalan, Tehsil and District Rupnagar.

Claims of the plaintiffs were based upon two sale deeds dated June 26,1970, whereby both the plaintiffs, who are real brothers purchased two plots from one Balwant Singh son of Daya Ram. It is alleged in the plaint that between the two plots, there is a private kacha gali, which was left by the owners for their exclusive use and the same is not a public street. It is,accordingly, prayed that the Municipal Committee has no concern or right to interfere in their use or dismantle the gate etc.

The respondent/municipality,however, disputed the right of the plaintiffs and claimed the street to be a public passage. It was also pleaded that the plaintiffs have encroached upon the public street by erecting pillars and a gate. The Municipality has also stated that they constructed a pucca drain in the street and on encroachment being made, a notice under Section 172 of the Punjab Municipal Committee was served upon the plaintiffs on June 12,1980 to remove the encroachment. On account of non compliance of the said notice, another notice under Section 220 of the said Act, was also served on July 14,1980. Thereafter, the Municipal Committee, Rupnagar, attempted to remove the encroachment from the street. However, the plaintiffs themselves removed the gate and the pillars. It was also pleaded that the plaintiffs have no right over the street.

The trial Court framed as many as three issues which are as follows:-

1. Whether the site in dispute is a private street exclusively used by the plaintiffs ? OPP

2. Whether the plaintiffs are entitled to the injunction prayed for ? OPP

3. Relief:

The trial Court returned a finding against the plaintiffs on the basis of evidence adduced by the parties. It has been observed that the plaintiffs have not produced any evidence to show that the street is their private passage for their plots. Admittedly, the trial Court also observed that the Municipal committee has made the street pucca by constructing drain and the drains are also being cleaned by the municipality. It has also been held that no private street has been shown in the two sale deeds whereby the plots were purchased by plaintiffs.

On the basis of above evidence, the trial Court dismissed the suit by its judgment and decree dated October 29,1983.

Aggrieved of the above judgment and decree, the plaintiffs preferred an appeal before the learned District Judge, Ropar, who has affirmed the judgment and decree and concurred with the findings of fact recorded by the trial Court.

I have heard the learned counsel for the parties.

Learned counsel appearing for the appellant has relied upon the definition of street as provided under Sub Section (3) of Section 173 of the Punjab Municipal Act and also the definition of public street.

I have gone through the definitions. Both the definitions are comprehensive enough to include even a space or even private property, which is being used as an approach by the public or an access to and fro

from another public space or thorough-fare. Admittedly, the plaintiffs have no right to restrict the movement of any other person to the street in question. Even the drain has been constructed by the municipality and is being repaired by it. Under these circumstances, the findings of the Courts below cannot be said to be perverse or contrary to the record. Moreover, no substantial question of law arises. No merit.

This Regular Second Appeal is hereby dismissed.

Oct 17,2007 **(Permod Kohli)**
RR **Judge**